

104TH CONGRESS
1ST SESSION

H. R. 43

To improve the regulation of explosives and explosive materials, and to prevent the use of explosives against persons and the unlawful use of explosives against property.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Ms. SLAUGHTER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the regulation of explosives and explosive materials, and to prevent the use of explosives against persons and the unlawful use of explosives against property.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bombing Prevention
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the number of criminal bombing incidents
9 in the United States has doubled since 1988;

1 (2) each year, hundreds of millions of pounds of
2 explosives are purchased without a permit being re-
3 quired;

4 (3) about one-third of the bombs used in crime
5 in recent years have contained black powder or
6 smokeless powder as filler;

7 (4) the terrorist bombing of the World Trade
8 Center and Pan Am Flight 103 and a series of
9 bombings in western New York State demonstrate
10 the grave dangers of bomb attacks;

11 (5) effective regulation of interstate commerce
12 in explosives is possible only with changes in the reg-
13 ulatory framework;

14 (6) explosive materials, by their nature, are
15 composed of numerous different substances, many of
16 which have travelled in interstate or foreign com-
17 merce; and

18 (7) the protection of the safety and property of
19 the citizenry, including the infrastructure vital to the
20 conduct of interstate and foreign commerce, requires
21 more careful regulation of explosives transactions.

22 **TITLE I—GENERAL REFORMS**

23 **SEC. 101. PERMITS FOR PURCHASE OF EXPLOSIVES.**

24 (a) IN GENERAL.—Section 842 of title 18, United
25 States Code, is amended—

1 (1) by amending subparagraphs (A) and (B) of
2 subsection (a)(3) to read as follows:

3 “(A) to transport, ship, cause to be trans-
4 ported, or receive any explosive materials; or

5 “(B) to distribute explosive materials to
6 any person other than a licensee or permittee.”;
7 and

8 (2) in subsection (b)—

9 (A) by adding “or” at the end of para-
10 graph (1);

11 (B) by striking “; or” at the end of para-
12 graph (2) and inserting a period; and

13 (C) by striking paragraph (3).

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall apply to conduct engaged in after the
16 18-month period that begins with the date of the enact-
17 ment of this Act.

18 (c) REGULATIONS.—

19 (1) IN GENERAL.—Not later than 6 months
20 after the date of the enactment of this Act, the Sec-
21 retary of the Treasury shall issue final regulations
22 with respect to the amendments made by subsection
23 (a), which shall take effect 18 months after such
24 date of enactment.

1 (2) NOTICE TO STATES.—On the issuance of
2 regulations pursuant to paragraph (1), the Secretary
3 of the Treasury shall notify the States of the regula-
4 tions so that the States may consider revising their
5 explosives laws.

6 **SEC. 102. LICENSES AND USER PERMITS.**

7 Section 843(a) of title 18, United States Code, is
8 amended—

9 (1) by inserting “, including fingerprints and a
10 photograph of the applicant” before the period at
11 the end of the 1st sentence; and

12 (2) by striking the 2nd sentence and inserting
13 the following: “Each applicant for a license shall pay
14 for each license a fee established by the Secretary
15 that shall not exceed \$300. Each applicant for a per-
16 mit shall pay for each permit a fee established by
17 the Secretary that shall not exceed \$100.”.

18 **SEC. 103. USE OF NATIONAL INSTANT CRIMINAL BACK-**
19 **GROUND CHECK SYSTEM TO INVESTIGATE**
20 **APPLICANTS FOR LICENSES AND PERMITS.**

21 The Secretary of the Treasury may use the national
22 instant criminal background check system established
23 under section 103 of the Brady Handgun Violence Preven-
24 tion Act to investigate each applicant for a license or per-
25 mit under chapter 40 of title 18, United States Code.

1 **SEC. 104. REQUIREMENTS FOR PURCHASES OF BLACK POW-**
2 **DER AND SMOKELESS POWDER.**

3 (a) IN GENERAL.—Section 845 of title 18, United
4 States Code, is amended—

5 (1) in subsection (a)(4), by striking “and com-
6 ponents thereof”;

7 (2) in subsection (a)(5), by striking “commer-
8 cially manufactured black powder in quantities not
9 to exceed fifty pounds,”; and

10 (3) by adding at the end the following:

11 “(c) Except in the case of section 842(f), and sub-
12 sections (d), (e), (f), (g), (h), and (i) of section 844, this
13 chapter shall not apply to commercially manufactured
14 black powder or smokeless powder in quantities not to ex-
15 ceed 5 pounds.”.

16 (b) CONFORMING AMENDMENT.—Section 926 of
17 such title is amended by striking subsection (c).

18 **SEC. 105. ENHANCED PENALTIES.**

19 Pursuant to its authority under section 994 of title
20 28, United States Code, the United States Sentencing
21 Commission shall promulgate amendments to the sentenc-
22 ing guidelines to appropriately enhance the penalties for
23 a violation of any provision of chapter 40 of title 18, Unit-
24 ed States Code, the penalties for which are not as severe
25 as the penalties for a comparable violation of chapter 44
26 of such title 18, so that the penalties for the violation of

1 the provision of such chapter 40 are the same as the pen-
2 alties for a comparable violation of such chapter 44.

3 **SEC. 106. DESTRUCTION OF SEIZED EXPLOSIVES THAT ARE**
4 **UNSAFE.**

5 Section 844(c) of title 18, United States Code, is
6 amended—

7 (1) by inserting “(1)” after “(c)”; and

8 (2) by adding after and below the end the
9 following:

10 “(2) Notwithstanding paragraph (1), in the case of
11 the seizure of any explosive materials for any offense for
12 which the materials would be subject to forfeiture in which
13 it would be impracticable or unsafe to remove the mate-
14 rials to a place of storage or would be unsafe to store
15 them, the seizing officer may destroy the explosive mate-
16 rials forthwith. Any destruction under this paragraph shall
17 be in the presence of at least 1 credible witness. The seiz-
18 ing officer shall make a report of the seizure and take
19 such samples as the Secretary may by regulation pre-
20 scribe.

21 “(3) Within 60 days after any destruction of property
22 pursuant to paragraph (2), the owner of (including any
23 person having an interest in) the property may apply to
24 the Secretary for reimbursement of an amount equal to
25 the fair market value of the property. If the claimant es-

1 tablishes to the satisfaction of the Secretary that the sei-
 2 zure was wrongful, the Secretary shall make an allowance
 3 to the claimant not exceeding the fair market value of the
 4 property destroyed.”.

5 **SEC. 107. FORFEITURE OF INSTRUMENTALITIES OF EXPLO-**
 6 **SIVES OFFENSES.**

7 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
 8 18, United States Code, is amended by adding at the end
 9 the following:

10 “(G) Any property, real or personal, involved in
 11 a violation of chapter 40 (relating to importation,
 12 manufacture, distribution, and storage of explosive
 13 materials), or in a conspiracy to commit such a vio-
 14 lation, and any other property traceable to such
 15 property.”.

16 (b) CRIMINAL FORFEITURE.—Section 982(a) of such
 17 title is amended by inserting the following:

18 “(6) The court, in imposing a sentence on a person
 19 convicted of a violation of chapter 40 or of conspiring to
 20 commit such a violation, shall order the person to forfeit
 21 to the United States any property, real or personal, in-
 22 volved in the violation or in the conspiracy, and any other
 23 property traceable to such property.”.

1 **TITLE II—PLASTIC EXPLOSIVES**

2 **SEC. 201. DEFINITIONS.**

3 Section 841 of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(o) ‘Convention on the Marking of Plastic Explo-
6 sives’ means the Convention on the Marking of Plastic Ex-
7 plosives for the purpose of Detection, done at Montreal
8 on March 1, 1991.

9 “(p) ‘Detection agent’ means any substance specified
10 or referred to in this subsection if introduced into a plastic
11 explosive or formulated in such explosive as a part of the
12 manufacturing process in such a manner as to achieve ho-
13 mogeneous distribution in the finished explosive, includ-
14 ing—

15 “(1) Ethylene glycol dinitrate
16 (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when
17 the minimum concentration in the finished explosive
18 is 0.2 percent by mass;

19 “(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB),
20 $C_6H_{12}(NO_2)_2$, molecular weight 176, when the mini-
21 mum concentration in the finished explosive is 0.1
22 percent by mass;

23 “(3) Para-Mononitrotoluene (p-MNT),
24 $C_7H_7NO_2$, molecular weight 137, when the minimum

1 concentration in the finished explosive is 0.5 percent
2 by mass;

3 “(4) Ortho-Mononitrotoluene (o-MNT),
4 $C_7H_7NO_2$, molecular weight 137, when the minimum
5 concentration in the finished explosive is 0.5 percent
6 by mass; and

7 “(5) any other substance in the concentration
8 specified by the Secretary, after consultation with
9 the Secretary of State and the Secretary of Defense,
10 which has been added to the table in part 2 of the
11 Technical Annex to the Convention on the Marking
12 of Plastic Explosives.

13 “(q) ‘Plastic explosive’ means an explosive material
14 in flexible or elastic sheet form formulated with 1 or more
15 high explosives which in their pure form have a vapor pres-
16 sure less than 10^{-4} Pascals at a temperature of 25° Cel-
17 sius, is formulated with a binder material, and is as a mix-
18 ture malleable or flexible at normal room temperature.”.

19 **SEC. 202. REQUIREMENT OF DETECTION AGENTS FOR**
20 **PLASTIC EXPLOSIVES.**

21 Section 842 of title 18, United States Code, is
22 amended by adding at the end the following:

23 “(l) It shall be unlawful for any person to manufac-
24 ture any plastic explosive which does not contain a detec-
25 tion agent.

1 “(m)(1) It shall be unlawful for any person to import
2 or bring into the United States, or export from the United
3 States, any plastic explosive which does not contain a de-
4 tection agent.

5 “(2) Paragraph (1) shall not apply to the importation
6 or bringing into the United States, or the exportation from
7 the United States, of any plastic explosive which was im-
8 ported, brought into, or manufactured in the United
9 States before the effective date of this subsection by or
10 on behalf of any agency of the United States performing
11 military or police functions (including any military reserve
12 component) or acting on behalf of the National Guard of
13 any State, not later than 15 years after the date of entry
14 into force of the Convention on the Marking of Plastic Ex-
15 plosives, with respect to the United States.

16 “(n)(1) It shall be unlawful for any person to ship,
17 transport, transfer, receive, or possess any plastic explo-
18 sive which does not contain a detection agent.

19 “(2) Paragraph (1) shall not apply to—

20 “(A) the shipment, transportation, transfer, re-
21 ceipt, or possession of any plastic explosive which
22 was imported, brought into, or manufactured in the
23 United States before the effective date of this sub-
24 section by any person during a period not exceeding
25 3 years after such effective date; or

1 “(B) the shipment, transportation, transfer, re-
2 ceipt, or possession of any plastic explosive, which
3 was imported, brought into, or manufactured in the
4 United States before the effective date of this sub-
5 section by or on behalf of any agency of the United
6 States performing a military or police function (in-
7 cluding any military reserve component) or by or on
8 behalf of the National Guard of any State, not later
9 than 15 years after the date of entry into force of
10 the Convention on the Marking of Plastic Explo-
11 sives, with respect to the United States.

12 “(o) It shall be unlawful for any person, other than
13 an agency of the United States (including any military re-
14 serve component) or the National Guard of any State, pos-
15 sessing any plastic explosive on the effective date of this
16 subsection to fail to report to the Secretary within 120
17 days after the effective date of this subsection the quantity
18 of such explosives possessed, the manufacturer or im-
19 porter, any marks of identification on such explosives, and
20 such other information as the Secretary may by regula-
21 tions prescribe.”.

22 **SEC. 203. CRIMINAL SANCTIONS.**

23 Section 844(a) of title 18, United States Code, is
24 amended to read as follows:

1 “(a) Any person who violates subsections (a) through
2 (i) or (l) through (n) of section 842 shall be fined under
3 this title, imprisoned not more than 10 years, or both.”.

4 **SEC. 204. EXCEPTIONS.**

5 Section 845 of title 18, United States Code, is
6 amended—

7 (1) in subsection (a)—

8 (A) by inserting “(l), (m), (n), and (o) of
9 section 842 and subsections” after “sub-
10 sections”; and

11 (B) in paragraph (1), by inserting “and
12 which pertains to safety” before the semicolon;
13 and

14 (2) by adding at the end the following:

15 “(c)(1) It is an affirmative defense against any pro-
16 ceeding involving subsection (l), (m), (n), or (o) of section
17 842 if the defendant proves by a preponderance of the evi-
18 dence that the plastic explosive—

19 “(A) consisted of a small amount of plastic ex-
20 plosive intended for and utilized solely in lawful—

21 “(i) research, development, or testing of
22 new or modified explosive materials;

23 “(ii) training in explosives detection or de-
24 velopment or testing of explosives detection
25 equipment; or

1 “(iii) forensic science purposes; or

2 “(B) was plastic explosive which, within 3 years
3 after the date of entry into force of the Convention
4 on the Marking of Plastic Explosives, with respect to
5 the United States, will be or is incorporated in a
6 military device within the territory of the United
7 States and remains an integral part of such military
8 device, or is intended to be, or is incorporated in,
9 and remains an integral part of a military device
10 that is intended to become, or has become, the prop-
11 erty of any agency of the United States performing
12 military or police functions (including any military
13 reserve component) or the National Guard of any
14 State, wherever such device is located.

15 “(2) For purposes of paragraph (1), the term ‘mili-
16 tary device’ includes shells, bombs, projectiles, mines, mis-
17 siles, rockets, shaped charges, grenades, perforators, and
18 similar devices lawfully manufactured exclusively for mili-
19 tary or police purposes.”.

20 **SEC. 205. INVESTIGATIVE AUTHORITY.**

21 Section 846 of title 18, United States Code, is
22 amended—

23 (1) by inserting “(a)” before “The”;

1 (2) in the last sentence, by inserting “sub-
2 section (m) or (n) of section 842 or” before “sub-
3 section”; and

4 (3) by adding after and below the end the
5 following:

6 “(b) The Attorney General shall exercise authority
7 over violations of subsections (m) or (n) of section 842
8 only when they are committed by a member of a terrorist
9 or revolutionary group. In any matter involving a terrorist
10 or revolutionary group or individual, as determined by the
11 Attorney General, the Attorney General shall have pri-
12 mary investigative responsibility and the Secretary shall
13 assist the Attorney General as requested.”.

14 **SEC. 206. EFFECTIVE DATE.**

15 The amendments made by this title shall take effect
16 1 year after the date of the enactment of this Act.

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